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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,192

11/14/2003

Cosmin Dini

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09/10/2007

HICKMAN PALERMO TRUONG & BECKER, LLP

2055 GATEWAY PLACE

SUITE 550

SAN JOSE, CA 95110

EXAMINER

OSMAN, RAMY M

ART UNIT

PAPER NUMBER

2157

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/714,192

Applicant(s)

DINI ET AL.

Examiner

Ramy M. Osman

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-23 is/are allowed.
- 6) ☒ Claim(s) 1,7-12,24,30-35,43 and 44 is/are rejected.
- 7) ☒ Claim(s) 2-6,13-19,25-29 and 36-42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Status of Claims*

1. This action is responsive to application filed on November 14, 2003. Claims 42 are pending examination.

### *Drawings*

2. The drawings filed on 11/14/2003 are acknowledged and are acceptable.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1,7-12,24,30-35,43,44 rejected under 35 U.S.C. 102(e) as being Smorodinsky by (US Patent No 6,496,948).**

5. In reference to claim 1, Smorodinsky teaches a method of measuring the availability of a network element or service, the method comprising the computer-implemented steps of:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value; and storing the second availability value (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40).

Art Unit: 2157

6. In reference to claim 7, Smorodinsky teaches a method as recited in Claim 1, further comprising the steps of: determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value; and storing the third availability value (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40).

7. In reference to claim 8, Smorodinsky teaches a method as recited in Claim 1, wherein determining the second availability value further comprises the steps of: detecting a command; and in response to detecting the command, determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40).

8. In reference to claim 9, Smorodinsky teaches a method as recited in Claim 1, further comprising the steps of: detecting an event while a current state is a first state that is in a first state cluster; in response to detecting the event, selecting, based on the current state and a type of the event, a second state that is in a second state cluster; determining whether the first state and the second state are in different state clusters (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40); and

in response to determining that the first state and the second state are in different state clusters, determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value that differs from the first operational state value (column 8 lines 40-67).

9. In reference to claim 10, Smorodinsky teaches a method as recited in Claim 1, further comprising the steps of determining whether the second availability value is less than a lowest recorded availability value; and if the second availability value is less than the lowest recorded availability value, then storing the second availability value as the lowest recorded availability value (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40).

10. In reference to claim 11, Smorodinsky teaches a method as recited in Claim 1, further comprising the steps of: comparing the second availability value with the first availability value; based on the comparing, selecting, from among a plurality of trend indicators, a particular trend indicator; and storing the particular trend indicator (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40).

11. In reference to claim 12, Smorodinsky teaches a method as recited in Claim 11, wherein selecting the particular trend indicator further comprises the steps of: selecting a first trend indicator if the first availability value is less than the second availability value; selecting a second trend indicator if the first availability value is equal to the second availability value; and selecting a third trend indicator if the first availability value is greater than the second availability value; wherein the first, second, and third trend indicators differ from each other (column 4 line 57 – column 5 line 10 and column 6 line 63 – column 7 line 40) and (column 8 lines 40-67).

12. In reference to claims 24 & 30-35, claims 24 & 30-35 are computer readable medium claims that correspond to the method claims of claims 1&7-12. Therefore, claims 24 & 30-35 are rejected based upon the same rationale as given for claims 1&7-12 above.

Art Unit: 2157

13. In reference to claims 43 & 44, claims 43 & 44 are apparatus claims that correspond to the method claims of claims 1&7. Therefore, claims 43 & 44 are rejected based upon the same rationale as given for claims 1& above.

*Allowable Subject Matter*

14. Claims 2-6, 13-19, 25-29, 36-42 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, into all independent claims, including all of the limitations of the base claim and any intervening claims.

15. For reasons for the indication of allowable subject matter see below Statement of reasons for allowance.

16. Claims 20-23 are allowed.

17. The following is an examiner's statement of reasons for allowance: Applicants invention of measuring the availability of a network element, is found to be patentable. Prior art references found to be pertinent to Applicants disclosure (as listed in attached Form 892), either only teach minor aspects of the invention or only teach the general environment of the invention. The prior art, neither singly or in combination, do not teach the claim limitations.

The particular novel feature of the invention (as mentioned in the claims) is the detecting an event while a current state is a first state that is in a first state cluster, and then in response to detecting the event, selecting, based on the current state and a type of the event, a second state that is in a second state cluster; afterwhich is determining whether the first state and the second

state are in different state clusters, and then in response to determining that the first state and the second state are in different state clusters, performing the steps of:

    multiplying a current availability value and a current time value to produce a first addend; subtracting the current time value from a new time value to produce a multiplicand; multiplying the multiplicand and an operational state value to produce a second addend; adding the first addend and the second addend to produce a dividend; dividing the dividend by the new time value to produce a new availability value; setting the current availability value equal to the new availability value; and setting the current time value equal to the new time value.

### *Conclusion*

18. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the above specified citations of the relied upon prior art are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and priority documents) is implied as being applied to teach the scope of the claims.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Form 892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

Art Unit: 2157

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMO  
August 31, 2007

  
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